

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MICHAEL ANDREW BAIN,	§	
	§	
Petitioner,	§	
	§	
V.	§	CIVIL ACTION NO. 3: 05-CV-909-B
	§	ECF
DOUGLAS DRETKE, Director,	§	
Texas Department of Criminal Justice	§	
Correctional Institutions Division	§	
	§	
Defendant.	§	

ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE

United States Magistrate Judge William F. Sanderson, Jr., made findings, conclusions and a recommendation in this case. Petitioner and Respondent filed objections. The undersigned District Court has conducted a *de novo* review of those portions to which objections were made and DENIES the objections as follows.

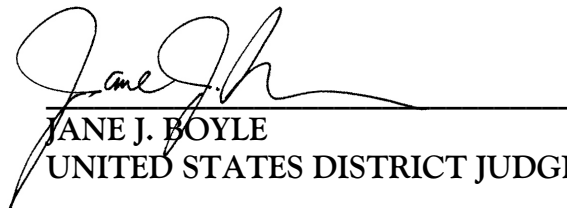
Petitioner Bain objects to twelve separate findings of the Magistrate Judge. The Court finds no merit to these objections and overrules them. Respondent Dretke, does not object to the Magistrate Judge's ultimate conclusion that Bain's habeas petition should be denied. But Dretke does take issue with the Magistrate Judge's determination that Bain's claim that his counsel failed to investigate his mental health and drug abuse history was fairly presented and thus exhausted at the state court level. The Court finds Respondent Dretke's objection in this regard to be without merit. Although some evidence regarding Bain's mental health and drug abuse was submitted to the Magistrate Judge that was not at the state court level, the Court

finds, as did the Magistrate Judge, that this additional evidence merely supplemented Bain's state court claim but did not fundamentally alter the claim presented to the state courts. *See Anderson v. Johnson*, 338 F.3d 382, 386-87 (5th Cir. 2003) ("dismissal is not required when evidence presented for the first time in a habeas proceeding *supplements* but does not *fundamentally alter* the claim presented to the state courts.") (emphasis in original)

Accordingly, Petitioner Bain's and Respondent Dretke's objections to the Magistrate Judge's findings and recommendation are OVERRULED and the Magistrate Judge's findings and recommendation are ACCEPTED as those of this Court.

SO ORDERED.

JULY 10, 2006


JANE J. BOYLE
UNITED STATES DISTRICT JUDGE